

SENATE No. 569

The Commonwealth of Massachusetts

PRESENTED BY:

Edward J. Kennedy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a mattress stewardship plan.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/24/2021</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/25/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/25/2021</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>2/26/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/26/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/3/2021</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>3/8/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/20/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>1/25/2022</i>

SENATE No. 569

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 569) of Edward J. Kennedy, Mathew J. Muratore, Colleen M. Garry, Jason M. Lewis and other members of the General Court for legislation to establish a mattress stewardship plan. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing a mattress stewardship plan.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21H of the General Laws is hereby amended by adding the
2 following section:- Mattress Stewardship Plan

3 Section 1. Definitions

4 (1) "Brand" means a name, symbol, word or mark that attributes a mattress to the
5 producer of such mattress;

6 (2) "Commissioner" means the Commissioner of the Department of Environmental
7 Protection;

8 (3) "Covered entity" means any political subdivision of the state, mattress retailer,
9 permitted transfer station, waste-to-energy facility, health care facility, educational facility,
10 military base or commercial or nonprofit lodging establishment that possesses a discarded

11 mattress that was used and discarded in this state. "Covered entity" does not include any
12 renovator, refurbisher or any person who only transports a discarded mattress;

13 (4) "Department" means the Department of Environmental Protection ;

14 (5) "Discarded mattress" means any mattress that a consumer discarded, intends to
15 discard or abandoned in the state.

16 (6) "Energy recovery" means the process by which all or a portion of solid waste
17 materials are processed or combusted in order to utilize the heat content or other forms of energy
18 derived from such solid waste materials;

19 (7) "Foundation" means any ticking-covered structure that is used to support a
20 mattress and that is composed of one or more of the following: A constructed frame, foam or a
21 box spring, whether stationary, adjustable or foldable. "Foundation" does not include any bed
22 frame or base made of wood, metal or other material that rests upon the floor and that serves as a
23 brace for a mattress;

24 (8) "Mattress" means any resilient material or combination of materials that is
25 enclosed by ticking, used alone or in combination with other products, and that is intended for or
26 promoted for sleeping upon. "Mattress" includes any foundation and any used or renovated
27 mattress. "Mattress" does not include any mattress pad, mattress topper, sleeping bag, pillow, car
28 bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib or bassinet
29 mattress, crib bumper, liquid or gaseous filled ticking, including any water bed and any air
30 mattress that does not contain upholstery material between the ticking and the mattress core, and
31 upholstered furniture, including a sleeper sofa;

32 (9) "Mattress core" means the principal support system that is present in a mattress,
33 including, but not limited to, springs, foam, air bladder, water bladder or resilient filling;

34 (10) "Mattress recycling council" or "council" means the nonprofit organization
35 created by producers or created by any trade association that represents producers who account
36 for a majority of mattress production in the United States to design, submit and implement the
37 mattress stewardship program described in section 2 of this act;

38 (11) "Mattress stewardship fee" means the amount added to the purchase price of a
39 mattress sold to a consumer or to an ultimate end user in this state that is necessary to cover the
40 cost of collecting, transporting and processing discarded mattresses by the council pursuant to
41 the mattress stewardship program;

42 (12) "Mattress stewardship program" or "program" means the state- wide program
43 described in section 2 of this act and implemented pursuant to the mattress stewardship plan;

44 (13) "Mattress topper" means any item that contains resilient filling, with or without
45 ticking, that is intended to be used with or on top of a mattress;

46 (14) "Performance goal" means a metric proposed by the council to measure, on an
47 annual basis, the performance of the mattress stewardship program, taking into consideration
48 technical and economic feasibilities, in achieving continuous, meaningful improvement in
49 improving the rate of mattress recycling in the state and any other specified goal of the program;

50 (15) "Producer" means any person, irrespective of the selling technique used, including
51 that of remote sale, who manufactures or renovates a mattress that is sold, offered for sale or
52 distributed in the state under the producer's own name or brand. "Producer" includes (A) the

53 owner of a trademark or brand under which a mattress is sold, offered for sale or distributed in
54 this state, whether or not such trademark or brand is registered in this state, and (B) any person
55 who imports a mattress into the United States that is sold or offered for sale in this state and that
56 is manufactured or renovated by a person who does not have a presence in the United States;

57 (16) "Recycling" means any process in which discarded mattresses, components and
58 by-products may lose their original identity or form as they are transformed into new, usable or
59 marketable materials. "Recycling" does not include the use of destructive incineration;

60 (17) "Renovate" or "renovation" means altering a mattress for the purpose of resale
61 including any one, or a combination of, the following: Replacing the ticking or filling, adding
62 additional filling, or replacing components with new or recycled materials. "Renovate" or
63 "renovation" does not include (A) the stripping of a mattress of its ticking or filling without
64 adding new material, (B) the sanitization or sterilization of a mattress without otherwise altering
65 the mattress, or (C) the altering of a mattress by a renovator when a person retains the altered
66 mattress for personal use, in accordance with regulations of the Department of Consumer and
67 Business Services;

68 (18) "Renovator" means any person who renovates discarded mattresses for the
69 purpose of reselling such mattresses to consumers;

70 (19) "Retailer" means any person who sells mattresses to a consumer or to an ultimate
71 end user in this state or offers mattresses to a consumer in this state through any means,
72 including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

73 (20) "Sanitization" means the direct application of chemicals to a mattress to kill
74 human disease-causing pathogens;

75 (21) "Sale" means the transfer of title of a mattress for consideration, including, but
76 not limited to, the use of a sales outlet, catalog, Internet web site or similar electronic means to a
77 consumer or to an ultimate end user in the state;

78 (22) "Sterilization" means the mitigation of any deleterious substances or organisms,
79 including human disease-causing pathogens, fungi and insects from a mattress or filling material
80 using a chemical or heat process;

81 (23) "Ticking" means the outermost layer of fabric or material of a mattress. "Ticking"
82 does not include any layer of fabric or material quilted together with, or otherwise attached to,
83 the outermost layer of fabric or material of a mattress; and

84 (24) "Upholstery material" means all material, loose or attached, between the ticking
85 and the core of a mattress.

86 Sec. 2. (a) Within 180 days following enactment of this title, each producer, or such
87 producer's designee, shall join the mattress recycling council and by said date such council shall
88 submit a plan, for approval by the Commissioner, to establish a state-wide mattress stewardship
89 program, as described in this subsection. Retailers may participate in said council. Such mattress
90 stewardship program shall, to the extent it is technologically feasible and economically practical:

91 (1) provide for free, convenient and accessible state-wide opportunities for the receipt of
92 discarded mattresses from any person in the state with a discarded mattress that was used and
93 discarded in the state, including, but not limited to, participating covered entities that accumulate
94 and segregate a minimum of one hundred discarded mattresses for collection at one time; (2)
95 provide for free collection of discarded mattresses from transfer stations that accumulate and
96 segregate fewer than fifty mattresses, provided the transfer stations require such collection due to

97 space or permit requirements; (3) provide for council-financed end-of-life management for
98 discarded mattresses collected pursuant to subdivisions (2) and (3) of this subsection; (4) provide
99 suitable storage containers at, or make other mutually agreeable storage and transport
100 arrangements for, permitted transfer stations for segregated, discarded mattresses, at no cost to
101 such municipality, provided such transfer station makes space available for such purpose and
102 imposes no fee for placement of such storage container on the transfer station's premises; (5)
103 provide that the organization will conduct research, as needed, related to improving used
104 mattress collection, dismantling, and recycling operations, including pilot programs to test new
105 processes, methods, or equipment on a local, regional, or otherwise limited basis; and (6) include
106 a mattress stewardship fee that is sufficient to cover the costs of operating and administering the
107 program. (b) The plan submitted pursuant to subsection (a) of this section shall: (1) Identify
108 each producer participating in the program; (2) describe the fee structure for the program; (3)
109 establish performance goals for the program that clearly outline the maximum feasible level of
110 recovery and recycling of used mattresses in support of the Commonwealth's overall waste
111 diversion goals as outlined in the department's solid waste master plan; (4) identify proposed
112 facilities to be used by the program; (5) Offer organizations that recycle or renovate discarded
113 mattresses the opportunity to participate as collection sites; (6) set convenience goals and a
114 timeline for implementing and achieving convenient access to the program; (7) detail how the
115 program will promote the recycling of discarded mattresses consistent with the state's solid
116 waste management hierarchy; (8) include a description of the public education program; (9)
117 propose a mechanism to mitigate the costs associated with collection of discarded mattresses that
118 are illegally dumped, which may include but need not be limited to proposals for funding of

119 clean-up activities, for education and outreach or for studies to evaluate the causes of illegal
120 dumping.

121 (c) The council shall set the amount of the mattress recycling fee that shall be added
122 to the purchase price of a mattress at the point of sale and include the fee amount in the annual
123 budget. The council shall establish and implement a fee structure that covers, but does not
124 exceed, the costs of developing the plan described in subsection (b) of this section, operating and
125 administering the program described in subsection (a) of this section and maintaining a financial
126 reserve sufficient to operate the program over a multi-year period of time in a fiscally prudent
127 and responsible manner. The council shall set the fee as a flat rate and not as a percentage of the
128 purchase price. The council shall maintain all records relating to the program for a period of not
129 less than three years.

130 (d) The Council shall include in its plan the establishment of a new Employment
131 Social Enterprise Impact Program based on written recommendations provided by the
132 Commissioner. The goal of the program will be to foster the sustainability of nonprofit
133 employment social enterprises that sell goods and services and enhance economic development
134 and environmental justice through work opportunities in mattress recycling for individuals facing
135 significant barriers to employment. The program will begin not later than one hundred eighty
136 days after the approval of a plan. Based on the submission of an eligible nonprofit application,
137 the council shall select at least one nonprofit employment social enterprise and award a contract
138 as a vendor for the collection, transportation and recycling of mattresses during the four year
139 period of the initial plan. Eligible applicants will be 501c3 nonprofit employment social
140 enterprises that have a demonstrated history of offering employment opportunities in mattress
141 recycling in Massachusetts as an approved vendor by the department and providing case

142 management and educational services for individuals facing significant barriers to employment.
143 In addition to the council's funding for the collection, transportation, and recycling of mattresses,
144 the selected nonprofit will be provided a contract that includes an additional social impact
145 payment to support the offering of wraparound and work readiness services, including but not
146 limited to training, transitional employment services, and case management as long as fifty
147 percent of individuals in the work crew face barriers to employment. The social impact payment
148 will equal no less than \$18 per mattress recycled or reused by the nonprofit, not to exceed
149 \$500,000 per year. Subsequent to the first four-year period of the plan, the council will evaluate
150 the opportunity to expand the program, and will continue to provide all program offerings
151 included in the initial plan, with no interruption of the program, to at least one eligible nonprofit
152 with a minimum of five years of mattress recycling experience as an approved vendor in
153 Massachusetts. Additionally, nonprofit employment social enterprises will receive bonus points
154 in any bid or grant application through the council or department that supports mattress
155 recycling, and will be eligible to receive awards on a continual annual basis to best support their
156 sustainability.

157 (e) Pursuant to the program, recycling shall be preferred over any other disposal
158 method for mattresses, to the extent that recycling is technologically feasible and economically
159 practical.

160 (f) The Commissioner shall approve the plan for the establishment of the mattress
161 stewardship program, provided such plan meets the requirements of subsections (a) to (c),
162 inclusive, of this section. Not later than ninety days after submission of the plan pursuant to this
163 section, the Commissioner shall make a determination whether to approve the plan. Prior to
164 making such determination, the Commissioner shall post the plan on the department's Internet

165 web site and solicit public comments on the plan. In the event that the Commissioner
166 disapproves the plan because it does not meet the requirements of subsections (a) to (d),
167 inclusive, of this section, the Commissioner shall describe the reasons for the disapproval in a
168 notice of determination that the Commissioner shall provide to the council. The council shall
169 revise and resubmit the plan to the Commissioner not later than forty-five days after receipt of
170 notice of the Commissioner's disapproval notice. Not later than forty-five days after receipt of
171 the revised plan, the Commissioner shall review and approve or disapprove the revised plan and
172 provide a notice of determination to the council. The council may resubmit a revised plan to the
173 Commissioner for approval on not more than two occasions. If the council fails to submit a plan
174 that is acceptable to the Commissioner because it does not meet the requirements of subsections
175 (a) to (c), inclusive, of this section, the Commissioner shall modify a submitted plan to make it
176 conform to the requirements of subsections (a) to (c), inclusive, of this section, and approve it.
177 Not later than one hundred eighty days after the approval of a plan pursuant to this section, or
178 one hundred eighty days, in the case of a plan modified by the Commissioner, the council shall
179 implement the mattress stewardship program. Regardless of when the program commences, the
180 program's fiscal year shall commence on January 1.

181 (g) (1) The council shall submit any proposed substantial change to the program to
182 the Commissioner for approval. For the purposes of this subdivision, "substantial change"
183 means: (A) A change in the processing facilities to be used for discarded mattresses collected
184 pursuant to the program, or (B) a material change to the system for collecting mattresses. If the
185 Commissioner does not disapprove a proposed substantial change within ninety days of receipt
186 of notification of such proposed substantial change, such proposed substantial change shall be
187 deemed approved.

188 (2) Within 90 days following the end of the program’s second fiscal year, the council
189 shall submit updated performance goals to the Commissioner that are based on the experience of
190 the program during the first two years of the program and to ensure continued alignment with the
191 department’s solid waste diversion goals.

192 (f) The council shall notify the Commissioner of other material changes to the
193 program on an ongoing basis, without resubmission of the plan to the Commissioner for
194 approval. Such changes shall include, but not be limited to, a change in the composition, officers
195 or contact information of the council.

196 (g) Within 90 days following the end of the program’s second fiscal year and every
197 two years thereafter, the council shall propose a mattress stewardship fee for all mattresses sold
198 in this state except those products excluded from the definition of “Mattress” in Section 1. The
199 council may propose a change to the mattress stewardship fee more frequently than once every
200 two years if the council determines such change is needed to avoid funding shortfalls or excesses
201 for the mattress stewardship program. Any proposed mattress stewardship fee shall be reviewed
202 by an auditor to assure that such assessment does not exceed the cost to fund the mattress
203 stewardship program described in subsection (a) of this section and to maintain financial reserves
204 sufficient to operate said program over a multi-year period in a fiscally prudent and responsible
205 manner. Not later than sixty days after the council proposes a mattress stewardship fee, the
206 auditor shall render an opinion to the Commissioner as to whether the proposed mattress
207 stewardship fee is reasonable to achieve the goals set forth in this section. If the auditor
208 concludes that the mattress stewardship fee is reasonable, then the proposed fee shall go into
209 effect. If the auditor concludes that the mattress stewardship fee is not reasonable, the auditor
210 shall provide the council with written notice explaining the auditor's opinion. Not later than sixty

211 days after the council's receipt of the auditor's opinion, the council may either propose a new
212 mattress stewardship fee or provide written comments on the auditor's opinion. If the auditor
213 concludes that the fee is not reasonable, the Commissioner shall decide, based on the auditor's
214 opinion and any comments provided by the council, whether to approve the proposed mattress
215 stewardship fee. Such auditor shall be selected by the council. The cost of any work performed
216 by such auditor pursuant to the provisions of this subsection and subsection (k) of this section
217 shall be funded by the mattress stewardship fee described in this subsection.

218 (h) On and after the implementation of the mattress stewardship program, each
219 manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer or to an
220 ultimate end user in the state shall add the mattress stewardship fee, established pursuant to
221 subsection (a) of this section and described in subsection (h) of this section, to the purchase price
222 for such mattress and shall remit the fee collected to the council. In each transaction described
223 above, the fee shall appear on the invoice and shall be accompanied by a brief description of the
224 fee. The council shall determine the rules and procedures that are necessary and proper to
225 implement the collection of the fee in a fair, efficient, and lawful manner. Any producer or
226 retailer who fails to participate in such program shall not sell mattresses in this state.

227 (i) Not later than October fifteenth of each year, the council shall submit an annual
228 report to the Commissioner of the for the most recently completed fiscal year. The
229 Commissioner shall post such annual report on the department's Internet web site. The
230 Commissioner shall review and approve the yearly annual report. Such report shall include: (1)
231 The tonnage of mattresses collected pursuant to the program from: (A) transfer stations, (B)
232 retailers, (C) collection events, and (D) all other covered entities; (2) the tonnage of mattresses
233 diverted for recycling; (3) the weight of mattress materials recycled, as indicated by the weight

234 of each of the commodities sold to secondary markets; (4) the weight of mattress materials sent
235 for disposal at each of the following: (A) Waste-to-energy facilities, (B) landfills, and (C) any
236 other facilities; (5) a summary of the public education that supports the program; (6) an
237 evaluation of the effectiveness of methods and processes used to achieve performance goals of
238 the program; and (7) recommendations for any changes to the program.

239 (j) The Commissioner of the Department of Environmental Protection shall appoint a
240 mattress stewardship program advisory committee. The advisory committee shall be comprised
241 with membership representation from the Commissioner of the Massachusetts Department of
242 Environmental Protection, or his/her designee, who shall serve as chair of the special
243 commission; a representative from MassRecycle; two representatives from two different covered
244 entities; a representative from a Massachusetts-based mattress recycling organization; a
245 representative of the Sierra Club of Massachusetts or another environmental nongovernmental
246 organization; a representative of a social enterprise nonprofit organization; and a representative
247 of the International Sleep Products Association. The commissioner will place great emphasis on
248 selecting a diverse group of advisory committee members. (2) The advisory committee shall
249 meet not less than once every quarter and shall consult with the Mattress Recycling Council and
250 advise the department, including delivering written recommendations regarding: (a) The review
251 of any plan for the development and implementation of a mattress stewardship program
252 submitted to the department; (b) The review of any amendment to a plan; (c) The review of
253 annual reports submitted by a stewardship organization.

254 (k) The Council shall conduct during the third year of implementing a mattress
255 stewardship program, and in consultation with the mattress stewardship program advisory
256 committee and a minimum of three other community organizations invited by the advisory

257 committee, a study evaluating the most effective methods of providing discarded mattress
258 collection services to low-income individuals and multifamily housing structures.

259 (l) Two years after the implementation of the program and every three years
260 thereafter, or upon the request of the Commissioner but not more frequently than once a year, the
261 council shall cause an audit of the program to be conducted by an auditor as described in
262 subsection (h) of this section. Such audit shall review the accuracy of the council's data
263 concerning the program and provide any other information requested by the Commissioner,
264 consistent with the requirements of this section, provided such request does not require the
265 disclosure of any proprietary information or trade or business secrets. Such audit shall be paid for
266 by the council. The council shall maintain all records relating to the program for not less than
267 three years.

268 (m) The Department of Environmental Protection shall align any policy that would
269 ban the disposal of mattresses with a timeline concurrent to the mattress stewardship plan.

270 Sec. 3. Upon implementation of the mattress stewardship program described in section 2
271 of this act, any covered entity that participates in such program shall not charge for the receipt of
272 discarded mattresses that are discarded in this state provided covered entities may charge a fee
273 for providing the service of collecting mattresses and may restrict the acceptance of mattresses
274 by number, source or physical condition.

275 Sec. 4. Each producer and the council shall be immune from liability for any claim of a
276 violation of antitrust law or unfair trade practice, if such conduct is a violation of antitrust law, to
277 the extent such producer or council is exercising authority pursuant to the provisions of sections
278 1 to 6, inclusive, of this act.

279 Sec. 5. (a) The Commissioner may seek civil enforcement of the provisions of sections 2
280 and 3 of this act.

281 (b) Whenever, in the judgment of the Commissioner, any person has engaged in or is
282 about to engage in any act, practice or omission that constitutes, or will constitute, a violation of
283 any provision of section 2 or 3 of this act, the Attorney General may, at the request of the
284 Commissioner, bring an action for an order enjoining such act, practice or omission. Such order
285 may require remedial measures and direct compliance with the provisions of section 2 or 3 of
286 this act. Upon a showing by the Commissioner that such person has engaged in or is about to
287 engage in any such act, practice or omission, the court may issue a permanent or temporary
288 injunction, restraining order or other order, as appropriate.

289 (c) Any action brought by the Attorney General pursuant to this section shall have
290 precedence in the order of trial.

291 Sec 6. In the event that another state implements a mattress recycling
292 program, the council may collaborate with such state to conserve efforts and resources
293 used in carrying out the mattress stewardship program, provided such collaboration is consistent
294 with the requirements of sections 1 to 6, inclusive, of this act.